

Terms and Conditions

- 1. Acceptance** - Seller's action in accepting this order, or delivering the goods or services covered by this order (hereinafter "Deliverables"), constitutes an acceptance of the terms and conditions set forth herein and on the face of this order. Terms and conditions contained in or submitted with Seller's proposal, acknowledgement, invoice or any other document shall be ineffective as to Buyer unless expressly accepted by a duly authorized representative of Buyer in a signed writing.
- 2. Pricing** - Seller represents and warrants that the price for the Deliverables is Seller's lowest price currently in effect for the quantity involved. Should Seller quote any lower price or better terms for any Deliverables of the same or less quantity to any other party prior to completion of this order, Seller will promptly notify Buyer, and, to the extent not unlawful, such lower price or better terms will apply to this order. Seller shall not charge Buyer, and Buyer shall have no obligation to pay, for any transportation, boxing, crating or other packaging unless set forth in this order.
- 3. Delivery** - Time is of the essence. If any delivery is, or is threatened to be, delayed, Seller shall promptly give notice thereof to Buyer's authorized representative, together with all relevant information. Such notice shall not relieve Seller of any duty hereunder. Seller's failure to deliver Deliverables of the quality and quantity, within the time, at the place, at the rate and in the manner specified by this order or agreed to in writing by the Buyer shall, at the option of the Buyer, without waiver of any rights, relieve Buyer of any obligation to accept and pay for such Deliverables or any undelivered installment.
- 4. Inspection** - Seller shall inspect all goods to verify quantity and quality prior to shipment. Buyer may inspect all parts, material, work and goods at all reasonable times and places, whether during or after manufacture or delivery.
- 5. Payment** - Unless otherwise stated on the face of this order, time for calculation of payment shall be computed from the date of Buyer's receipt of an acceptable invoice or Buyer's acceptance of the Deliverables, whichever is later. Payment to Seller shall not constitute acceptance of Deliverables.
- 6. Warranties** - Seller warrants that the Deliverables covered by this order shall be (a) in merchantable condition and free from defects in workmanship, materials and parts, (b) in conformity with the specifications, drawings, samples and descriptions attached hereto or referred to on the face of this order, or, if no specifications are provided, with industry standard specifications for like goods or services, (c) fit for such particular uses, if any specified by Buyer or otherwise known to Seller, (d) free and clear of any lien, encumbrances or adverse claim against title, and (e) to the extent not manufactured to detailed designs furnished by Buyer, free from defects in design. Seller further warrants that: (u) Deliverables of a creative nature, such as but not limited to copy or artwork ("Creative Deliverables") will be considered a work made for hire; (v) Buyer shall be the sole owner of the Creative Deliverables; (w) it has the necessary authority to grant and assign all Creative Deliverables to Buyer; (x) such grant and assignment will not violate any commitment of Seller; (y) the Creative Deliverables do not infringe upon the rights of any third party; and, (z) no attribution to Seller is required. Seller hereby assigns all right, title, and interest in Creative Deliverables and Seller waives and shall not attempt to enforce any moral rights to the Creative Deliverables. Such warranties shall survive inspection, test, acceptance and payment. Seller's warranties (and any consumer warranties, service policies, or similar undertaking of Seller) shall be enforceable by Buyer's customers and any subsequent owner or user of the Goods as well as by Buyer.
- 7. Remedies** - Seller shall be liable for all damages, including consequential, incidental, and special damages, incurred by Buyer as a result of Seller's failure to meet or comply with warranties or its obligations. Without limiting Seller's liability hereunder, if the Deliverables are defective in any way or do not conform to warranties or with the provisions of this order, Buyer, in addition to other rights and remedies it may have, may revoke its acceptance of, or may reject any or all of the Deliverables. Upon such revocation or rejection, Buyer may return, at Seller's expense, any or all of the goods or require prompt correction or replacement thereof at Seller's expense.
- 8. Risk of Loss** - Seller assumes all risk of loss or damage (a) until the acceptance by Buyer of all Deliverables, (b) to Seller's property in connection with Seller's performance of this order, (c) to third persons and their property in connection with Seller's performance of this order, (d) to any Buyer owned property held by Seller or its supplier or property held for the account of Buyer, and (e) to any Deliverables or part thereof rejected by Buyer or as to which Buyer has revoked acceptance, from the time of such rejection or revocation.
- 9. Import Requirements** - Upon Buyer's request, Seller shall provide Buyer with an appropriate certification stating the country of origin of the goods sufficient to satisfy the requirements of (a) all relevant customs authorities, and (b) any applicable export licensing regulations. Seller shall mark all goods (or the goods' container if there is no room on the goods) with the country of origin. Seller shall, in marking the goods, comply with all relevant customs laws and requirements of such customs authorities. If any goods are imported, Seller shall, when possible, allow Buyer to be the importer of record. If Buyer is not the importer of record and Seller obtains duty drawback rights to the goods, Seller shall, upon Buyer's request, provide Buyer with documents required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to Buyer.
- 10. Corporate Social Responsibility** - Seller acknowledges that Buyer has committed to embrace, support and enact within its sphere of influence the Ten Principles of the Global Compact. In connection thereto, Seller shall endeavor to comply with the Ten Principles of the UN Global Compact. Seller shall endeavor to reduce the environmental impact of its activities, including the provision of Deliverables hereunder. Seller shall respect the human rights of its employees and shall provide employees with a safe and healthy work environment. Furthermore, Seller agrees not to engage in child labor or any form of forced or compulsory labor.
- 11. Anti-Bribery** - Seller shall not give or cause to be given any bribes or unlawful or inappropriate kickbacks to government officials, Buyer's purchasing staff or any other person or entity. Seller further agrees not to directly or indirectly accept any bribes or unlawful or inappropriate kickbacks.
- 12. Equipment and Tools** - If Buyer furnishes Seller with tools, dies, jigs, fixtures, patterns or other equipment for Seller's use in filling this order, the same shall be and remain the property of Buyer and shall not be used for orders of third parties without Buyer's written consent. All such property, while in Seller's care, custody and control shall be held at Seller's risk and shall be insured by Seller at Seller's expense in an amount equal to replacement costs with loss payable to Buyer. Seller shall promptly return such property to Buyer in the same condition as received, ordinary wear and tear excepted, upon completion of this order, unless otherwise agreed upon.
- 13. Indemnity** - Seller shall defend, indemnify and hold harmless Buyer, its affiliates, their respective directors, officers, employees, agents and representatives, all direct and indirect customers and users of the Deliverables from any and all claims, liabilities, damages, costs, losses and expenses, of any nature (including reasonable attorneys' fees) on account of any claim, suit, action or proceeding involving or alleged to involve (a) infringement or violation of trademark, copyright, patent, or other proprietary rights in the manufacture, sale, or use of the Deliverables, (b) performance by Seller in whole or in part of this order upon Buyer's premises (if this order requires such performance), except to the extent the same is caused solely by the gross negligence or willful misconduct of Buyer, (c) personal injury or product liability or similar claim to the extent attributable to the Deliverables, (d) Seller's breach of any warranty or obligation hereunder, (e) failure by Seller to comply with applicable laws, and/or (f) Seller's negligent or wrongful acts or omissions.
- 14. Insurance** - Seller shall procure, maintain and at all times continue in effect at its sole expense, commercial general liability insurance including completed operation and products liability coverage with primary limits of not less than USD\$1,000,000 or local currency equivalent per occurrence, combined single limit, for bodily injury, personal injury and property damage liability and excess or umbrella liability insurance with limits of not less than USD\$5,000,000 or local currency equivalent per occurrence. Seller shall obtain, at its own expense an additional insured vendor's broad form endorsement on all policies of insurance procured in accordance with insurance requirements set forth above and shall list Buyer as an additional insured on such policies. Within fifteen (15) days following the receipt of this order Seller shall furnish to Buyer a certificate evidencing that the insurance coverage required herein is in full force and effect. Failure of Seller to furnish Buyer with a corresponding certificate of insurance shall not constitute a waiver on the part of Buyer, and the requirement that Seller defend, indemnify and hold harmless Buyer as set forth in Clause 13 shall remain in full force and effect without regard to Seller's failure under this section.
- 15. Termination** - Buyer reserves the right to terminate this order in whole or in part at any time without cause upon written notice to Seller. Upon receipt of such notice, Seller shall (a) immediately stop work on the portion of the order terminated (b) preserve and protect materials in its possession and (c) take corresponding action with respect to its suppliers and contractors. Upon such termination Buyer and Seller shall promptly negotiate a fair and equitable settlement based on Seller's satisfactory performance hereunder prior thereto. Seller shall not be entitled to any damages or prospective profits as a result of any such termination. If Seller breaches or commits an anticipatory repudiation of any provision hereof, Buyer has the right, in addition to any other rights and remedies it may have, to terminate this order by written notice to Seller. Upon such termination, Buyer shall have no liability to Seller for any amount and may, at its option, either return to Seller, at Seller's cost, any Deliverables delivered prior to such termination or require Seller to pay all costs incurred by Buyer in effecting completion of Seller's performance hereunder, or both.
- 16. Modifications** - No change, modification or rescission of this order or any provision herein shall be effective except by a writing signed by a duly authorized representative of Buyer and Buyer shall have the right, by giving written notice to Seller signed by an authorized purchase representative of Buyer, to change or modify any drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation on reasonable notice. Upon receipt of any such notice, Seller shall perform under this order as altered by said notice and shall deliver to Buyer, within fifteen (15) days of receipt of said notice, a statement showing the effect, if any, of said notice upon the cost of, or the time required for, performance of this order, and the parties shall negotiate an equitable adjustment in the contract price or delivery schedule, or both.
- 17. Non-disclosure** - Seller shall not without Buyer's prior written consent disclose or permit to be disclosed any information contained in or related to this order, to any person to whom such disclosure is not necessary in connection with the performance of this order. All property, including artwork furnished hereunder by Buyer shall similarly be maintained in confidence, shall remain Buyer's property and, together with all copies thereof, shall be returned to Buyer or, if specifically authorized in writing by Buyer, destroyed followed by a certificate of destruction.
- 18. Assignment** - Seller shall not assign any right or obligation under this order without the prior written consent of Buyer. Buyer may assign any right or obligation under this order without the consent of Seller.
- 19. Severability** - If any provision of these terms and conditions is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of these terms and conditions shall remain in full force and effect.
- 20. Waiver** - The failure of Buyer to insist upon performance of any provision of this order or to exercise any right or privilege granted to Buyer under this order shall not be construed as a waiver of such provision and the same shall remain in effect.
- 21. Applicable Laws** - Seller shall comply with all applicable laws, rules, orders and regulations of any applicable governmental body, including, without limitation, all local, State, and Federal laws and regulations affecting the price, production, sale or delivery of the Deliverables. In particular (a) Seller hereby agrees to incorporate in each invoice covering Deliverables pursuant to this order, a certification that the Deliverables covered by the invoice were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and with all relevant regulations and orders of the United States Department of Labor issued under Section 14 thereof, and (b) Seller warrants that (i) all Deliverables delivered hereunder and all work performed and activities undertaken on Seller's premises, including the equipment used therefor, shall comply with applicable standards promulgated under the Occupational Safety and Health Act of 1970, as amended, and regulations adopted thereunder, together with any applicable occupational health and safety laws and regulations of any state, (ii) the nondiscrimination clauses contained in Section 202 of Executive Order 11246, as amended, relative to equal employment opportunity, and the implementing rules and regulations of the Office of Federal Contract Compliance are incorporated herein, (iii) in accepting this order, Seller assumes responsibility for testing, process control, labeling and other requirements of the U.S. Consumer Product Safety Commission and/or other applicable regulatory agencies or laws, and is responsible for reporting product hazards in accordance with Section 15 of the Consumer Product Safety Act, Public Law 92-573, as amended, (iv) any food, drug, or cosmetic supplied pursuant to this order is not at the time of shipment adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act of 1938, as amended and (v) that all goods which are chemical substances, or if the goods are not chemical substances, then all chemical substances comprising the goods, shall be, at the time of the sale and the Buyer's receipt, on the then current list of chemical substances published by the Administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substances Control Act and in compliance with all other rules and regulations of the Environmental Protection Agency and any state environmental regulatory agency in the United States of America.
- 22. Governing Law** - This order shall be governed by, subject to, and construed in accordance with the laws of the State of Ohio without giving effect to its conflicts of laws principles. Buyer and Seller irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts in the State of Ohio. Seller waives any objection to jurisdiction or venue therein and consents to service of process by mail.
- 23. No Prejudice** - These terms and conditions, and any ambiguity found herein, shall not be construed against a party merely because such party drafted these terms and conditions.
- 24. Entire Agreement / Headings** - This order, including these terms and conditions and any terms on the face of this order, and the documents referred to herein or on the face of this order constitute the entire agreement between Buyer and Seller with respect to the subject matter hereof. If this order is issued pursuant to any prior written agreement between Buyer and Seller and such agreement is referenced on the face of this order, the terms and conditions of such agreement shall supersede those contained herein to the extent the terms herein are inconsistent. Headings are for the convenience of reference only and shall not control the construction or interpretation of any of the provisions of this order.